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HOUSE BILL 415

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Patricia A. Lundstrom

AN ACT

RELATING TO ALCOHOL; PROHIBITING THE RETAIL SALE OF ALCOHOLIC BEVERAGES TO PERSONS CONVICTED A FOURTH OR SUBSEQUENT TIME OF DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING THE MOTOR VEHICLE DIVISION TO ESTABLISH A DATABASE AND PROCEDURE FOR LICENSED RETAIL LIQUOR DISTRIBUTORS TO DETERMINE IF A PERSON IS PROHIBITED FROM THE RETAIL PURCHASE OF ALCOHOLIC BEVERAGES; ENACTING A NEW SECTION OF THE LIQUOR CONTROL ACT; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Liquor Control Act is enacted to read:

" [NEW MATERIAL] PROHIBITED RETAIL SALES-- PENALTIES. --

A. It is a violation of the Liquor Control Act for a person who has had a fourth or subsequent conviction for

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1 driving while under the influence of intoxicating liquor or
2 drugs, as provided in Section 66-8-102 NMSA 1978, to purchase
3 alcoholic beverages from a retailer for a period of one year
4 after the completion of the jail term imposed for the
5 conviction.

6 B. It is a violation of the Liquor Control Act for
7 a licensed retailer to sell alcoholic beverages to a person who
8 has had a fourth or subsequent conviction for driving while
9 under the influence of intoxicating liquor or drugs, as
10 provided in Section 66-8-102 NMSA 1978, for a period of one
11 year after the completion of the jail term imposed for the
12 conviction.

13 C. A licensed retailer, his employee or agent shall
14 require the purchaser of alcoholic beverages to show
15 identification in the form of a driver's license or
16 identification card. If the driver's license or identification
17 card is issued by this state, the seller shall determine, in a
18 manner established by the motor vehicle division of the
19 taxation and revenue department, if the purchaser is restricted
20 from the purchase of alcoholic beverages as a result of
21 multiple convictions for driving while under the influence of
22 intoxicating liquor or drugs. A licensed retailer, his
23 employee or agent shall be relieved of this requirement if the
24 driver's license or identification card is not issued by this
25 state.

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1 D. A person who gives, loans, sells or delivers an
2 identification card to a person unable to purchase alcoholic
3 beverages under this section with the knowledge that the person
4 intends to use the identification card for the purpose of
5 purchasing alcoholic beverages is guilty of a petty misdemeanor
6 and shall be sentenced pursuant to the provisions of Section
7 31-19-1 NMSA 1978.

8 E. A person who purchases alcoholic beverages for a
9 person unable to purchase alcoholic beverages under this
10 section is guilty of a petty misdemeanor and shall be sentenced
11 pursuant to the provisions of Section 31-19-1 NMSA 1978. "

12 Section 2. Section 66-5-15 NMSA 1978 (being Laws 1978,
13 Chapter 35, Section 237, as amended) is amended to read:

14 "66-5-15. LICENSES ISSUED TO APPLICANTS. --

15 A. The department shall, upon payment of the
16 required fee, issue to every qualified applicant a driver's
17 license as applied for, which license shall bear the full name,
18 date of birth, New Mexico residence address, [~~and~~] a brief
19 description of the licensee and the signature of the licensee.
20 No license shall be valid unless it bears the signature of the
21 licensee.

22 B. The license shall have a magnetic code, or other
23 marking as determined by the department, that will allow a
24 licensed retailer of alcoholic beverages to determine if the
25 licensee is not authorized to purchase alcoholic beverages as a

1 result of multiple convictions for driving while under the
2 influence of intoxicating liquor or drugs."

3 Section 3. Section 66-5-23 NMSA 1978 (being Laws 1978,
4 Chapter 35, Section 245, as amended) is amended to read:

5 "66-5-23. RECORDS TO BE KEPT BY THE DIVISION. --

6 A. The division shall file every application for a
7 driver's license or a commercial driver's license pursuant to
8 the provisions of the New Mexico Commercial Driver's License
9 Act received by it and shall maintain suitable indexes
10 containing:

11 (1) all applications denied and, on each, note
12 the reasons for denial;

13 (2) all applications granted;

14 (3) the name of every licensee whose license
15 has been suspended or revoked by the division and, after each,
16 note the reasons for the action; and

17 (4) the name of every licensee who has
18 violated his written promise to appear in court.

19 B. The division shall also file all abstracts of
20 court records of conviction or reports from the trial courts of
21 this state [~~received by it~~], which show [~~either that~~] whether a
22 driver is a first offender or a subsequent offender and whether
23 that offender was represented by counsel or waived the right to
24 counsel, [~~received by it under the laws of this state, with~~
25 ~~attention to~~] and shall comply with the provisions of Article

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1 III of the Driver License Compact [~~and in connection~~
2 ~~therewith~~]. The division shall maintain convenient records or
3 ~~make~~ suitable notations in order that the individual record of
4 each licensee, showing the convictions of the licensee [~~in~~
5 ~~which he has been involved~~], shall be readily ascertainable and
6 available for the consideration of the division upon any
7 application for renewal of license, in determining if the
8 licensee is prohibited from the purchase of alcoholic beverages
9 and at other suitable times. "

10 Section 4. Section 66-5-405 NMSA 1978 (being Laws 1978,
11 Chapter 35, Section 332, as amended) is amended to read:

12 "66-5-405. CONTENTS OF CARD. --

13 A. The identification card shall adequately
14 describe the registrant and bear his picture, which shall show
15 a full face or front view for all registrants. All
16 identification cards of persons under the age of twenty-one
17 years shall have a printed legend indicating that the person is
18 under twenty-one. The identification card shall bear the
19 following statement:

20 "STATE OF NEW MEXICO IDENTIFICATION
21 CARD NO. _____

22 This card is provided solely for the purpose of establishing
23 that the bearer described on the card was not the holder of a
24 New Mexico driver's license as of the date of issuance of this
25 card. This identification card is not a license. ISSUED FOR

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1 IDENTIFICATION PURPOSES ONLY. "

2 B. The identification card shall have a magnetic
3 code, or other marking as determined by the department, that
4 will allow a licensed retailer of alcoholic beverages to
5 determine if the holder is not authorized to purchase alcoholic
6 beverages as a result of multiple convictions for driving while
7 under the influence of intoxicating liquor or drugs."

8 Section 5. Section 66-8-102 NMSA 1978 (being Laws 1953,
9 Chapter 139, Section 54, as amended) is amended to read:

10 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
11 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
12 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

13 A. It is unlawful for a person who is under the
14 influence of intoxicating liquor to drive a vehicle within this
15 state.

16 B. It is unlawful for a person who is under the
17 influence of any drug to a degree that renders him incapable of
18 safely driving a vehicle to drive a vehicle within this state.

19 C. It is unlawful for a person who has an alcohol
20 concentration of eight one hundredths or more in his blood or
21 breath to drive a vehicle within this state.

22 D. Aggravated driving while under the influence of
23 intoxicating liquor or drugs consists of a person who:

24 (1) has an alcohol concentration of sixteen
25 one hundredths or more in his blood or breath while driving a

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1 vehicle within this state;

2 (2) has caused bodily injury to a human being
3 as a result of the unlawful operation of a motor vehicle while
4 driving under the influence of intoxicating liquor or drugs; or

5 (3) refused to submit to chemical testing, as
6 provided for in the Implied Consent Act, and in the judgment of
7 the court, based upon evidence of intoxication presented to the
8 court, was under the influence of intoxicating liquor or drugs.

9 E. ~~Every~~ A person under first conviction pursuant
10 to this section shall be punished, notwithstanding the
11 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
12 not more than ninety days or by a fine of not more than five
13 hundred dollars (\$500), or both; provided that if the sentence
14 is suspended in whole or in part or deferred, the period of
15 probation may extend beyond ninety days but shall not exceed
16 one year. Upon a first conviction pursuant to this section, an
17 offender may be sentenced to not less than forty-eight hours of
18 community service or a fine of three hundred dollars (\$300).
19 The offender shall be ordered by the court to participate in
20 and complete a screening program described in Subsection H of
21 this section and to attend a driver rehabilitation program for
22 alcohol or drugs, also known as a "DWI school", approved by the
23 bureau and also may be required to participate in other
24 rehabilitative services as the court shall determine to be
25 necessary. In addition to those penalties, when an offender

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1 commits aggravated driving while under the influence of
2 intoxicating liquor or drugs, the offender shall be sentenced
3 to not less than forty-eight consecutive hours in jail. If an
4 offender fails to complete, within a time specified by the
5 court, any community service, screening program, treatment
6 program or DWI school ordered by the court, the offender shall
7 be sentenced to not less than an additional forty-eight
8 consecutive hours in jail. Any jail sentence imposed pursuant
9 to this subsection for failure to complete, within a time
10 specified by the court, any community service, screening
11 program, treatment program or DWI school ordered by the court
12 or for aggravated driving while under the influence of
13 intoxicating liquor or drugs shall not be suspended, deferred
14 or taken under advisement. On a first conviction pursuant to
15 this section, any time spent in jail for the offense prior to
16 the conviction for that offense shall be credited to any term
17 of imprisonment fixed by the court. A deferred sentence
18 pursuant to this subsection shall be considered a first
19 conviction for the purpose of determining subsequent
20 convictions.

21 F. A second or third conviction pursuant to this
22 section shall be punished, notwithstanding the provisions of
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than
24 three hundred sixty-four days or by a fine of not more than one
25 thousand dollars (\$1,000), or both; provided that if the

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1 sentence is suspended in whole or in part, the period of
2 probation may extend beyond one year but shall not exceed five
3 years. Notwithstanding any provision of law to the contrary
4 for suspension or deferment of execution of a sentence:

5 (1) upon a second conviction, [~~each~~] an
6 offender shall be sentenced to a jail term of not less than
7 seventy-two consecutive hours, forty-eight hours of community
8 service and a fine of five hundred dollars (\$500). In addition
9 to those penalties, when an offender commits aggravated driving
10 while under the influence of intoxicating liquor or drugs, the
11 offender shall be sentenced to a jail term of not less than
12 ninety-six consecutive hours. If an offender fails to
13 complete, within a time specified by the court, any community
14 service, screening program or treatment program ordered by the
15 court, the offender shall be sentenced to not less than an
16 additional seven consecutive days in jail. A penalty imposed
17 pursuant to this paragraph shall not be suspended or deferred
18 or taken under advisement; and

19 (2) upon a third conviction, an offender shall
20 be sentenced to a jail term of not less than thirty consecutive
21 days and a fine of seven hundred fifty dollars (\$750). In
22 addition to those penalties, when an offender commits
23 aggravated driving while under the influence of intoxicating
24 liquor or drugs, the offender shall be sentenced to a jail term
25 of not less than sixty consecutive days. If an offender fails

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1 to complete, within a time specified by the court, any
2 screening program or treatment program ordered by the court,
3 the offender shall be sentenced to not less than an additional
4 sixty consecutive days in jail. A penalty imposed pursuant to
5 this paragraph shall not be suspended or deferred or taken
6 under advisement.

7 G. Upon a fourth or subsequent conviction pursuant
8 to this section, an offender is guilty of a fourth degree
9 felony, as provided in Section 31-18-15 NMSA 1978, and shall be
10 sentenced to a jail term of not less than six months, which
11 shall not be suspended or deferred or taken under advisement.

12 H. Upon the arrest of a person for driving while
13 under the influence of intoxicating liquor or drugs and having
14 been convicted three or more times previous, a condition for
15 bail, if authorized by the court, shall include the provision
16 that the person shall not purchase alcoholic beverages from a
17 retailer.

18 [~~H.~~] I. Upon any conviction pursuant to this
19 section, an offender shall be required to participate in and
20 complete, within a time specified by the court, an alcohol or
21 drug abuse screening program and, if necessary, a treatment
22 program approved by the court. The requirement imposed
23 pursuant to this subsection shall not be suspended, deferred or
24 taken under advisement.

25 [~~H.~~] J. Upon a first conviction for aggravated

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1 driving while under the influence of intoxicating liquor or
2 drugs pursuant to the provisions of Subsection D of this
3 section, as a condition of probation, an offender shall be
4 required to have an ignition interlock device installed and
5 operating for a period of one year on all motor vehicles driven
6 by the offender, pursuant to rules adopted by the bureau.

7 Unless determined by the sentencing court to be indigent, the
8 offender shall pay all costs associated with having an ignition
9 interlock device installed on the appropriate motor vehicles.

10 If an offender drives a motor vehicle that does not have an
11 ignition interlock device installed on the motor vehicle, the
12 offender may be in violation of the terms and conditions of his
13 probation.

14 ~~[J.]~~ K. Upon a first conviction for driving while
15 under the influence of intoxicating liquor or drugs pursuant to
16 the provisions of Subsection A, B or C of this section, as a
17 condition of probation, an offender may be required to have an
18 ignition interlock device installed and operating for a period
19 of one year on all motor vehicles driven by the offender,
20 pursuant to rules adopted by the bureau. Unless determined by
21 the sentencing court to be indigent, the offender shall pay all
22 costs associated with having an ignition interlock device
23 installed on the appropriate motor vehicles. If an offender
24 drives a motor vehicle that does not have an ignition interlock
25 device installed on the motor vehicle, the offender may be in

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1 violation of the terms and conditions of his probation.

2 [K-] L. Upon any subsequent conviction pursuant to
3 this section, as a condition of probation, a subsequent
4 offender shall be required to have an ignition interlock device
5 installed and operating for a period of at least one year on
6 all motor vehicles driven by the subsequent offender, pursuant
7 to rules adopted by the bureau. Unless determined by the
8 sentencing court to be indigent, the subsequent offender shall
9 pay all costs associated with having an ignition interlock
10 device installed on the appropriate motor vehicles. If a
11 subsequent offender drives a motor vehicle that does not have
12 an ignition interlock device installed on the motor vehicle,
13 the subsequent offender may be in violation of the terms and
14 conditions of his probation.

15 [L-] M. In the case of a first, second or third
16 offense under this section, the magistrate court has concurrent
17 jurisdiction with district courts to try the offender.

18 [M-] N. A conviction pursuant to a municipal or
19 county ordinance in New Mexico or a law of any other
20 jurisdiction, territory or possession of the United States that
21 is equivalent to New Mexico law for driving while under the
22 influence of intoxicating liquor or drugs, and that prescribes
23 penalties for driving while under the influence of intoxicating
24 liquor or drugs, shall be deemed to be a conviction pursuant to
25 this section for purposes of determining whether a conviction

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1 is a second or subsequent conviction.

2 [N-] 0. In addition to any other fine or fee
3 [~~which~~] that may be imposed pursuant to the conviction or other
4 disposition of the offense under this section, the court may
5 order the offender to pay the costs of any court-ordered
6 screening and treatment programs.

7 [Ø-] P. As used in this section:

8 (1) "bodily injury" means an injury to a
9 person that is not likely to cause death or great bodily harm
10 to the person, but does cause painful temporary disfigurement
11 or temporary loss or impairment of the functions of any member
12 or organ of the person's body; and

13 (2) "conviction" means an adjudication of
14 guilt and does not include imposition of a sentence."

15 Section 6. EFFECTIVE DATE. --The effective date of the
16 provisions of this act is July 1, 2003.

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